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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/806,407

03/23/2004

Hiroyuki Shioji

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21369

7590

09/29/2006

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EXAMINER

BLANKENSHIP, GREGORY A

ART UNIT

PAPER NUMBER

3612

DATE MAILED: 09/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/806,407

Applicant(s)

SHIOJI ET AL.

Examiner

Greg Blankenship

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 3/23/04, 1/27/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 is not clearly understood because the term “special cross section” is unclear. The examiner has read this limitation as a non-rectangular and non-circular cross section.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 2001-049696.

The Japanese patent application discloses a cab for a construction machine, as shown in Figure 3. The cab has an outer side portion formed to have a curved surface bulging outward, as shown in Figure 7b. A sliding door is fitted to the outer side portion, as shown in Figure 3. Four pillars are mounted in the front right, the front left, the rear right, and the rear left, as shown in Figure 3. The cab is mounted in a position offset from the center of rotation of a turntable rotatably mounted on a traveling gear.. Two of the four pillars are mounted respectively in a first position at the outer side portion where it bulges and in a

Art Unit: 3612

second position on an inner side portion and located opposite to the first position in the left-and-right direction. In reference to claims 4, 8, and 9, the pillars can provide protection for an operator if the construction machine rolls over.

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001-049696 in view of Sorensen et al. (6,485,084).

The Japanese patent application does not disclose the construction of the pillars.

Sorensen et al. teach forming pillars of a construction machine of pipe with an arrowhead cross section to improve the line of sight for the operator.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the pillars of the Japanese patent application of pipes that have an arrow-head shape cross section to improve the line of sight for the operator.

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001-049696 in view of Sorensen et al. (6,325,449).

The Japanese patent application does not disclose a U-shaped frame mounted between the upper-end portions of the rear left and right pillars that is directed rearward to form a U-shaped rear roof frame.

Sorensen et al. teach firmly mounting a U-shaped frame (84) between upper-end portions of the rear left and right pillars (56,58) that is directed rearward to form a U-shaped rear roof frame.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to add a U-shaped frame between the upper-end portions of the rear left and right pillars of the Japanese patent application such that the U-shaped frame is directed rearward to form a U-shaped rear roof frame, as taught by Sorensen et al., to strengthen the connection between the rear pillars resulting in a stronger cab.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over JP 2001-049696 in view of O'Neill et al. (6,149,228).

The Japanese patent application discloses a front pillar that is connected at its upper end to a beam portion. The beam portion is connected to the upper end of the rear pillar, as seen in Figure 3. However, the Japanese patent application does not disclose front pillar and rearwardly extending beam portion as claimed.

O'Neill teaches a roll over protection system that has front pillars (30) and rear pillars (28). The front pillars (30) are formed of pipes that have their upper end portions bent rearward in a two-dimensional manner to form a beam portion (36), as shown in Figure 3 and disclosed on lines 43-45 of column 3. The rear-end portion of the beam portion (36) is coupled to the upper end of the rear pillar (28).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form each of the front pillars and rearwardly extending beam portions of the Japanese patent application as a single pipe with its upper end portion bent rearward to provide a stronger structure that requires less time and parts to assemble.

Art Unit: 3612

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the JP 2001-049696 in view of. Martin, Jr. (6,561,572), further in view of Stewart (6,799,353).

The Japanese patent application does not disclose a pipe member and a stopper member.

Martin, Jr. teaches the addition of a handle comprising a vertical pipe member attached near a corner portion where the outer side portion and the rear side portion meet. However, Martin, Jr. does not teach a stopper member.

Stewart teaches covering a handle with closed cell foam to provide a non-slip surface.

Closed cell foam inherently has an energy absorbing capability that allows it to provide a cushion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to:

add a vertical pipe member near a corner portion where the outer side portion and the rear side portion of the Japanese patent application meet, as taught by Martin, Jr., to provide a handle to improve access to the cab; and,

cover the pipe member with closed cell foam, as taught by Stewart, to provide a cushioned, non-slip grip surface to improve ones grip of the handle in inclement weather resulting in a structure that would also act as a stopper member when the sliding door is opened.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Greg Blankenship whose telephone number is 571-272-6656.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3612

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

gab

September 20, 2006



D. GLENN DAYOAN 9/26/06  
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